IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 295 of 2000
in
SPECIAL CIVIL APPLICATION No 6054 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANOJ NAGARDAS PANCHHIWALA

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 295 of 2000
SHRI DILIP B RANA for the appellant.
SHRI NAGESH SOOD, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1
RULE SERVED BY DS for Respondent No. 1,2-3
SHRI MEHUL H RATHOD for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 03/09/2003

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Against the order dated 3rd July 2000 passed by the learned Single of this Court (Coram: Ms.R.M. Doshit, J.) dismissing Special Civil Application No.6054 of 2000 filed by the appellant-petitioner the appellant has filed this Letters Patent Appeal.

2. It is the case of the petitioner that he was qualified in the sense that the has passed SSC Examination initially on 7.3.1991. He was appointed as Daily Wager with respondent no.3-Deesa Nagarpalika. However, his services were terminated on 1.2.1992. Therefore, he approached the Labour Court by way of a reference by raising industrial dispute. During pendency of the reference before the Labour Court removal order of the appellant was withdrawn on the condition that he will withdraw his case filed before the Labour Court. Accordingly, with effect from 2.4.1994 he was appointed on the post of Peon on a fixed monthly salary. In this way he made his come back in service with respondent no.3-Nagarpalika. Within a period of three years after his reinstatement in service as Peon in 1994 he applied for promotion to the higher post of Clerk on the ground that he was qualified to be promoted on the said post of Clerk. Accordingly, by order dated 25.11.1997 (Annexure 'B' to the petition) he was appointed as permanent Clerk on temporary basis, by the President of respondent no.3-Deesa Nagarpalika. His appointment along with others was approved by the General Body of respondent, Nagarpalika in its meeting held on 28.11.1997.

3. Coming to know about the illegal appointments of the appellant-petitioner and others made by Deesa Nagarpalika without following any procedure the Collector, Banaskantha issued Show Cause Notice against the appellant-petitioner on 9.7.1998 (Annexure 'C'). The same was replied by the appellant-petitioner. But the copy of the same was not produced on record of the case. Be that as it may. It seems that after considering the reply the Collector, Banaskantha set aside the order dated 25.11.1997 and the Resolution dated 28.11.1997.

3.1 Aggrieved of the aforesaid order dated 17.10.1998 (Annexure 'E') passed by the Collector, Banaskantha, the appellant-petitioner approached the Joint Secretary (Nagarpalika), Urban Development and Urban Housing

Department, Gandhinagar by way of Revision Application No.105 of 1998. Initially, interim stay was granted against the order passed by the Collector in Revision Application by the Joint Secretary.

4. It seems that the petitioner had earlier approached this Court by way of Special Civil Application No.7785 of 1998 against the impugned Show Cause Notice dated 9.7.1998 (Annexure 'C' to the main petition) and the order dated 17.10.1998 (Annexure 'E' to the petition) passed by the Collector, Banaskantha declaring his appointment and the appointment of some others made by Deesa Municipality as contrary to the relevant rules and for revoking such orders. However, the said petition was disposed of by the learned Single Judge (Coram: Ms.R.M. Doshit, J.) on 29.1.1999 on the ground that the petitioner had alternative remedy by way of Revision Application and in fact he had already filed Revision Application No.105 of 1998 before the State Government and the ad interim relief granted earlier in that petition was also vacated.

4.1 It appears that Revision Application filed by the appellant-petitioner before the State Government against the order passed by the Collector came to be dismissed on 16.2.2000 (Annexure 'A' to the petition) on the ground that the President of the Nagarpalika had no jurisdiction to make any appointment under section 45 of the Municipalities Act, 1963 and the powers to appoint have been given only to the Chief Officer of the Nagarpalika. Thus, the recruitment of the appellant-petitioner on the post of Peon and his promotion to the post of Clerk were held to be bad and the impugned order passed by the Collector at Annexure 'E' dated 17.10.1998 was upheld. The impugned order at Annexure 'E' dated 17.10.1998 passed by the Collector, Banaskantha and the impugned order at Annexure 'A' dated 16.2.2000 passed by the State Government dismissing the Revision Application of the appellant-petitioner were challenged by the appellant-petitioner before this Court by way of Special Civil Application No.6054 of 2000. The said petition was summarily dismissed by the learned Single Judge (Coram: Ms.R.M. Doshit, J.) by her Lordship's order dated 3.7.2000 as her Lordship was of the opinion that the petitioner was earlier appointed as a Daily Wager without following any procedure and thereafter, he was given promotion on the post of Junior Clerk once again without following due procedure. Thus, according to the learned Single Judge his appointment on the post of Peon and promotion to the post of Clerk were bad and therefore, the same were rightly quashed and set aside by the

Collector and the revision application filed against the order of the Collector was rightly rejected by the State Government. The learned Single Judge while dismissing the petition of the appellant-petitioner in limine held that the petitioner having not been selected and appointed after following due procedure and in accordance with law his employment cannot be protected. This has been challenged in this Letters Patent Appeal.

5. Learned counsel Shri Rana for the appellant-petitioner raised the following submissions:

(i) Looking to the necessity and requirement of work, the appellant-petitioner was initially appointed on the post of Peon as Daily Wager. Later on, he was promoted by the President of the Nagarpalika and his promotion was also approved by the General Body in its meeting held on 28.11.1997. He was qualified to be promoted on the post of Junior Clerk. Therefore, he was promoted as he was entitled for the same, when there was a vacancy. He further submitted that during the period he worked there was no complaint whatsoever against him. Therefore, it can be inferred that his work was satisfactorily and reasonably good. In spite of that his services have been terminated by the Collector only on the ground that his initial appointment was not in accordance with law. He submitted that it is not the case of back door entry in service.

(ii) He, therefore, submitted that the order passed by the learned Single Judge dismissing the writ petition be quashed and set aside; his writ petition be accepted; the order passed by the State Government dismissing his revision application against the order passed by the Collector be quashed and set aside; and the appellant-petitioner be declared to be in continuous service as if the impugned order at Annexure 'C' was never passed against the petitioner by the Collector.

6. From the facts narrated by us hereinabove it is clear that initially the appellant-petitioner was appointed on the post of Daily Wager Peon on 7.3.1991. Within a period of one year, i.e. on 1.2.1992 he was removed from service. Therefore, he approached the Labour Court by way of reference. The requirement is that one should complete 240 days in one calender year. That requirement was obviously was not fulfilled in this case. In spite of that the President of the respondent-Nagarpalika compromised the matter with the appellant-workman and decided to take him back in service with effect from 2.4.1994 on the condition that he will

withdraw the proceedings filed by him before the Labour Court; thereafter promoted him on the post of Junior Clerk within three years, i.e. 25.11.1997 on the ground that he was qualified though he was merely SSC. Within three days of it the General Body passed a Resolution on 28.11.1997 and approved the appointment of the appellant-petitioner along with the appointment of others.

6.1 It is not in dispute that the President of the Nagarpalika had neither any jurisdiction nor any powers to make any appointment. In spite of it, the then President of the Nagarpalika appointed the appellant-petitioner on the post of Peon and after termination of his services, settled the matter and reinstated him in service on a fixed salary and then within three years promoted him on the post of Junior Clerk. Merely because the General Body of the Nagarpalika has approved or confirmed the order of the Nagarpalika, the appellant-petitioner would not be entitled to submit that his employment should have been protected. As soon as it had come to the notice of the Collector from the Chief Officer of the Nagarpalika that illegal appointments were made by the President of the Nagarpalika, the Collector issued notices to the concerned persons including the present appellant-petitioner and after considering the reply, passed the impugned order dated 17.10.1998, at Annexure 'E'.

7. Under the circumstances, we are of the considered opinion that if the person concerned who had no authority or power made the appointment then, nobody can claim right to be continued in service. Obviously, the recruitment and promotion in service of the appellant-petitioner was not in accordance with law and it was nothing but a back door entry. Under the circumstances when the learned Single Judge of this court refused to exercise her extraordinary jurisdiction in favour of the appellant-petitioner, then certainly this Court cannot interfere with such order in Letters Patent Appeal.

8. In view of the above discussion, this Letters Patent Appeal fails and is hereby dismissed. Notice is discharged. No order as to costs.

(B.J. SHETHNA, J.)

(RAVI R. TRIPATHI, J.)

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